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DEC 03 2004

In re Application of
Yang Gao
Application No. 10/799,505
Filed: March 11, 2004
Attorney Docket No. 0160114

**OFFICE OF PETITIONS
ON PETITION**

This is a decision on the petition filed under 37 CFR 1.53, October 4, 2004, requesting a filing date of March 11, 2004 for the above identified application.

Application papers in the above-identified application were filed on March 11, 2004. However, on September 23, 2004, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application had not been accorded a filing date because a complete specification including at least one claim was required, that the application had been filed without drawings, that the oath or declaration was missing and finally that the abstract was not provided.

In response, the instant petition, under 37 CFR 1.53, with a date-stamped postcard receipt itemized was filed to show that a 23 page specification which includes four (4) pages of claims (pages 19-22) and a one page abstract on page 23, labeled on the postcard as "Patent Application, plus and oath or declaration and five (5) sheets of drawings containing Figures 1-5, were filed on March 11, 2004.

Petitioner submits a copy of the Express Mail label as proof that the application as filed was complete, and argues under 37 CFR 1.10(e) that the application should be accorded a filing date of March 11, 2004. The Express Mail label however is not persuasive evidence of the receipt of the complete specification, drawings and oath or declaration on March 11, 2004. Where there is a dispute as to the *contents* of correspondence submitted to the Office an applicant may not rely upon the provisions of 37 CFR 1.10 to establish what documents and or fees were filed in the Office with such correspondence. Reliance on an express mail label is only appropriate where the correspondence was sent by Express Mail but nothing was received by the Office.

The postcard receipt corroborates petitioners assertion that the application as filed on March 11, 2004 was complete and the true copies of the application satisfies the requirements as set out in the Notice mailed September 23, 2004.

In view of the foregoing, the petition is **GRANTED**.

Given the basis for granting the petition, the petition fee filed with the petition on October 4, 2004 in the amount of \$130.00 will be credited to deposit account no. 50-1867.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of March 11, 2004, using the application papers received in the Office on that date and the papers submitted on petition October 4, 2004. Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in cursive script, reading "Patricia Faison-Ball". The signature is written in black ink and is positioned above the printed name and title.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions